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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/516,875 | 08/04/2005 | John Graeme Houston | 9931-006US | 6164 |

79526 7590 12/12/2008
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| EXAMINER |
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PATEL, PRITESH ASHOK

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| ART UNIT | PAPER NUMBER |
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12/12/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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|------------------------------|--------------------------------------|---------------------------------------|--|
| Office Action Summary | Application No. 10/516,875 | Applicant(s) HOUSTON ET AL. | |
| | Examiner PRITESH PATEL | Art Unit 4158 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 December 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 December 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>12/03/2004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION***Double Patenting***

1. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

2. Claims 1-3 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 2-4 of prior U.S. Patent No. 6776194 B2. This is a double patenting rejection.

3. Claim 4 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 4 of U.S. Patent No. 6776194 B2.

Although the conflicting claims are not identical, they are not patentably distinct from each other because having known the equation for the relationship described in claim 4 of the US patent then claim 4 of the application is an obvious corollary to one of ordinary skill in the art at the time of the invention.

4. Claims 5-9 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 2-4 of U.S. Patent No. 6776194 B2 in view of Houston et al.

Concerning claims 5-7, Houston et al. discloses a helical angle between 5 degrees and 50 degrees. It would have been obvious to one of ordinary skill in

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the art at the time of the invention to use 5 degrees to 20 degrees or 8 degrees as the helical angle.

Concerning claim 8, Houston et al. discloses the conduit as a blood flowing tube as disclosed above.

Concerning claim 9, Houston et al. discloses that a helical formation effects a rotational flow of fluid in a conduit as disclosed above.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 10, 11, and 14-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Houston et al. (WO 00/38591).

Concerning claims 10, 18, and 19, Houston et al. discloses conduit having integrally a helical formation (claim 6 of Houston et al.).

Concerning claim 11, Houston et al. discloses a helix angle as being between 5 degrees and 50 degrees (claim 8 of Houston et al.).

Concerning claims 14, 15, and 20, Houston et al. discloses a blood flow elongate member with a helical formation that effects a rotational flow of fluid within said member (page 2 paragraph 4).

Concerning claim 16, Houston et al. discloses inwardly extending portions

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in the elongate member (page 3 paragraph 4).

Concerning claim 17, Houston et al. discloses a helical formation adapted as an insert to be mounted within a conduit (page 6 paragraph 5, continued on page 7).

Concerning claim 21, Houston et al. discloses that said blood flow member can compromise a graft (page 4 paragraph 2).

Concerning claim 22, Houston et al. discloses that said blood flow member can compromise a stent (claim 34 of Houston et al.).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Houston et al.

Concerning claims 12 and 13, Houston et al. discloses a helical range of 5

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degrees to 50 degrees. It would have been obvious to one of ordinary skill in the art at the time of the invention to see that 5 degrees to 20 degrees and 8 degrees falls within the range discloses by Houston et al.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PRITESH PATEL whose telephone number is (571)270-7025. The examiner can normally be reached on Monday-Friday 7:30Am-5:00PM, every other Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Jackson can be reached on (571)272-4697. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/P. P./

Examiner, Art Unit 4158

12/04/2008

/Gary Jackson/

Supervisory Patent Examiner

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